

OFFICIAL FILE
ILLINOIS COMMERCE COMMISSION IN PROCEEDINGS BEFORE
THE ILLINOIS COMMERCE COMMISSION

ORIGINAL

TRIAD MANAGEMENT, INC.
 an Illinois corporation,

Petitioner,

v.

PEOPLES ENERGY CORPORATION,
 an Illinois corporation,

Respondent.

No. 02-0066

ILLINOIS
 COMMERCE COMMISSION
 2002 SEP 13 A 11:11
 CHIEF CLERK'S OFFICE

FIRST AMENDED COMPLAINT

Petitioner TRIAD MANAGEMENT, INC., an Illinois corporation, by its attorney, Stephen T. Saporta, complaining against Respondent PEOPLES ENERGY CORPORATION, an Illinois corporation, states as follows:

I. THE PARTIES

1. That Petitioner TRIAD MANAGEMENT, INC. (hereinafter referred to as "TRIAD"), is an Illinois Corporation which has its principal place of business in the City of Chicago, County of Cook and State of Illinois.

2. That since on or about August 28, 1998, TRIAD has owned, operated and managed that certain multi-unit residential apartment building located at 44-48 N. Parkside Avenue in the City of Chicago, County of Cook and State of Illinois (hereinafter referred to as "Parkside").

3. That from on or about August 28, 1998, to on or about December 18, 2000, TRIAD owned, operated and managed that certain multi-unit residential apartment building located at 3200 W. Fulton Blvd., in the City of Chicago, County of Cook and State of Illinois (hereinafter referred to as "Fulton").

4. That Respondent PEOPLES ENERGY CORPORATION (hereinafter referred to as "PEOPLES") is an Illinois corporate utility which provides or distributes natural gas to its customers throughout the state, including the City of Chicago, County of Cook and State of Illinois.

II. THE BILLING DISPUTE

5. That on or about August 28, 1998, PEOPLES took an actual meter reading at Parkside, and on or about September 10, 1998, PEOPLES took an actual meter reading at Fulton.

6. That at or about that time, TRIAD supplied representatives from PEOPLES with a set of keys for each property, so that PEOPLES could access the gas meters and read the same for each property.

7. That according to PEOPLES, on or about August 28, 1998, the gas meter at Parkside actually read: 82718 and on or about September 10, 1998, the gas meter at Fulton actually read: 81384. True and correct copies of the Fulton and Parkside Billings are attached to TRIAD's initial "Formal Complaint" and are hereby incorporated by this reference as if fully set forth herein as an "Appendices A and B," respectively.

8. That PEOPLES' recapitulation of the meter readings for Parkside -- which was submitted to this Honorable Commission during the informal hearing stage -- includes actual readings taken by PEOPLES (denoted "ACTUAL") and system estimates generated by PEOPLES (denoted "SYSTEM EST") for the period August 28, 1998 through December 19, 2001, and is attached to TRIAD's initial "Formal Complaint" and is hereby incorporated by this reference as if fully set forth herein as "Group Exhibit A."

9. That from time to time and specifically by way of example, on or about the following dates, TRIAD read the meter at Parkside and submitted its actual readings to PEOPLES via PEOPLES' automated telephone service or, when that system was dysfunctional, by giving that data

to a PEOPLES representative by telephone:

August 21, 2001: 00417
September 15, 2001: 00728
October 16, 2001: 01570
November 15, 2001: 03076
December 15, 2001: 04891.

10. That despite TRIAD's submission of its own meter readings at Parkside as aforesaid, PEOPLES failed and refused to utilize the same, and instead chose to rely upon its own system estimates.

11. That PEOPLES' recapitulation of the meter readings for Fulton -- which was submitted to this Honorable Commission during the informal hearing stage -- includes actual readings taken by PEOPLES (denoted "ACT"), system estimates generated by PEOPLES (denoted "EST") and actual readings taken by TRIAD (denoted "CUST"), for the period August 28, 1998 through December 18, 2000, and is also attached to TRIAD's initial "Formal Complaint" as "Group Exhibit A" and is hereby incorporated by this reference.

A. CONSECUTIVE ESTIMATES AT PARKSIDE

12. That following the first reading at Parkside on or about August 28, 1998, and despite having full access to both properties, PEOPLES failed and refused to take another actual reading at Parkside for nearly twenty eight months -- *until on or about December 14, 2000* -- and chose instead to estimate the meter readings at Parkside up until that point, in violation of the Illinois Administrative Code's prohibition against consecutive estimates set forth in 83 IL Admin. Code, Ch. 1, §280.80. See "Group Exhibit A."

B. CONSECUTIVE ESTIMATES AT FULTON

13. That following the reading at Fulton on or about September 10, 1998, PEOPLES took an actual reading on or about September 25, 1998, and according to PEOPLES' bill, the meter read: 82032. Thereafter, PEOPLES failed and refused to take an actual reading at FULTON for the next

four months, and instead issued bills to TRIAD based upon the following consecutive system estimates:

October 28, 1998:	84370
November 24, 1998:	88032
December 29, 1998:	93675
January 20, 1999:	90000.

PEOPLES actually estimated *negative gas usage* from December 29, 1998 to January 20, 1999.

Notably, the first three estimates set forth above were conspicuously omitted from PEOPLES' submission to this Honorable Commission during the informal hearing process. See "Group Exhibit A." Nevertheless, as more fully set forth in "Group Exhibit B," TRIAD was in fact billed for these erroneous and consecutive estimates, which are clearly in violation of 83 IL Admin. Code, Ch. 1, §280.80.

C. GLARING BILLING ERRORS AT FULTON

14. That an even more glaring error regarding the Fulton billings comes to light when one compares PEOPLES' estimated billing for the period August 28, 1998 to January 20, 1999, comprising **145 days, for 9447 Therms**, with PEOPLES' estimated billing for the period January 20, 1999 to February 26, 1999, comprising **37 days, for 25,086 Therms!**

15. That PEOPLES further violated the Illinois Administrative Code's prohibition against consecutive estimates set forth in 83 IL Admin. Code, Ch. 1, §280.80, with regard to its billing practices at Fulton, to wit: two consecutive estimates in March and April, 1999; and five consecutive estimates from August to December, 1999.

D. GLARING BILLING ERRORS AT PARKSIDE

16. That on or about January 14, 2000, at the specific instance and request of TRIAD, PEOPLES took an actual meter reading at Parkside, and the meter was verified to be: 22893. **This actual meter reading was never reflected in any bill sent to TRIAD.** Compare "Group Exhibit A" with paragraph 6 of the letter from PEOPLES to TRIAD dated August 14, 2001, which is

attached to TRIAD's initial "Formal Complaint" as "Exhibit E" and is hereby incorporated by this reference.

17. That PEOPLES took an actual reading at Parkside on or about December 14, 2000, and the meter was verified to be: 42063. See "Group Exhibit A."

18. That according to these actual readings, 19,170 CCFs were used during the period January 14 to December 14, 2000, at Parkside.

E. ERRONEOUS "ESTIMATED" BILLS

19. That TRIAD is informed and believes that the procedure used by PEOPLES to calculate the estimated bills for both Parkside and Fulton has not been approved by this Honorable Commission, in violation of 83 IL Admin. Code, Ch. 1, §280.80(a)(1).

20. That in the alternative to the preceding paragraph, even if the procedure used by PEOPLES to calculate the estimated bills for both Parkside and Fulton has been approved by this Honorable Commission, this procedure cannot withstand administrative review because it resulted in TRIAD being overbilled for Fulton and it resulted in TRIAD receiving "unbilled service," as that term is defined in 83 IL Admin. Code, Ch. 1, §280.100(d), for Parkside.

F. THE FIRST ERRONEOUS "MAKE-UP" BILL AT PARKSIDE

21. That on or about December 14, 2000, at the specific instance and request of TRIAD, PEOPLES took an actual reading of the gas meter at Parkside, which reflected a reading of 42063. See "Group Exhibit A."

22. That on or about December 19, 2000, PEOPLES issued "a 'make-up' bill for previously unbilled utility service at Parkside resulting from two or more consecutive estimated bills," canceling the prior billing of \$18,362.40 for the period August 28, 1998 to November 15, 2000, and revising the billing for the same period to \$30,395.96, which revised "make up" bill exceeded the previous estimate for such billing period by more than 50%. 83 IL Admin. Code, Ch. 1, §280.100(d).

i. PEOPLES' Refusal to Address the Issue

23. That on or about January 5, 2001, TRIAD notified PEOPLES in writing that it disputed the "make up" bill set forth above. In good faith, TRIAD paid the sum of \$5,000.00 toward the disputed balance. A true and correct copy of that certain correspondence is attached to TRIAD's initial "Formal Complaint" as "Exhibit C." and is hereby incorporated by this reference. 24.

That despite the foregoing, PEOPLES refused to review the Parkside bill with TRIAD for a period of eight months. True and correct copies of follow-up correspondence from TRIAD to PEOPLES dated April 2 and 23, 2001, which more fully set this forth are attached to TRIAD's initial "Formal Complaint" as "Group Exhibit D" are hereby incorporated by this reference.

ii. More Consecutive "Estimated" Bills

25. That, in the meantime, from on or about December 14, 2000 to May 16, 2001, PEOPLES resumed their practice of failing to take actual readings of the Parkside meter, choosing instead to make consecutive estimates, in further violation of 83 IL Admin. Code, Ch. 1, §280.80.

G. THE SECOND ERRONEOUS "MAKE-UP" BILL AT PARKSIDE

26. That on or about June 15, 2001, PEOPLES took an actual reading of the gas meter at Parkside, which reflected a reading of 55767. See "Group Exhibit A."

27. That on or about June 19, 2001, PEOPLES issued "a 'make-up' bill for previously unbilled utility service at Parkside resulting from two or more consecutive estimated bills," canceling the prior billing of **\$5,093.47** for the period December 14, 2000 to May 16, 2001, and revising the billing for the same period to **\$14,777.74**, which revised "make up" bill exceeded the previous estimate for such billing period by more than 50%. 83 IL Admin. Code, Ch. 1, §280.100(d).

i. PEOPLES Finally Responds

28. That PEOPLES finally responded in writing to TRIAD regarding the Parkside account on or about August 14, 2001. A true and correct copy of that certain correspondence from PEOPLES to TRIAD, dated August 14, 2001, which more fully sets this forth is attached to TRIAD's initial "Formal Complaint" as "Exhibit E" and is hereby incorporated by this reference.

29. That TRIAD responded to the same in writing on or about August 28, 2001. That, specifically, TRIAD pointed out that both PEOPLES' "estimated bills" and "make up" bills failed to take into account occupancy rates, in addition to the "degree day analysis" employed by the utility. A true and correct copy of said correspondence is attached to TRIAD's initial "Formal Complaint" as "Exhibit F" and is hereby incorporated by this reference.

ii. PEOPLES Makes No Offer to Resolve the Dispute

30. That thereafter, on or about September 7, 2001, PEOPLES notified TRIAD by telephone that "the hold" on TRIAD's account was at an end, and the gas would be turned off. That same day, TRIAD notified PEOPLES in writing of its intention to arrange for payments of amounts actually owed to PEOPLES, in accordance with its prior correspondence. A true and correct copy of said correspondence is attached to TRIAD's initial "Formal Complaint" as "Exhibit G" and is hereby incorporated by this reference.

31. That on or about September 22, 2001, PEOPLES notified TRIAD once again by telephone that TRIAD's "time was up" and that the gas would be turned off. That same day, TRIAD once again reiterated in writing that it had never refused to make payment on the account, but rather wished to amicably resolve the dispute with PEOPLES in a businesslike manner. A true and correct copy of said correspondence is attached to TRIAD's initial "Formal Complaint" as "Exhibit H" and is hereby incorporated by this reference.

32. That despite repeated attempts by TRIAD to resolve this billing dispute, and despite its minimum obligation to do so under §280.100(d), PEOPLES never offered to accept payments

toward the liquidation of those amounts over a normal bill set forth in Paragraphs 19 and 24, supra, over a period mutually agreed to by PEOPLES and TRIAD, at least as long as the combined periods over which the excess amounts accrued; namely, a period of nearly thirty-two months, all in violation of 83 IL Admin. Code, Ch. 1, §280.100(d).

H. "Make-Up" Bills and the Occupancy Distribution Factor

33. That, despite repeated requests, TRIAD has never even been given the "degree day analysis" utilized by PEOPLES and approved by this Honorable Commission, which formula is alleged by PEOPLES to have been used not only in estimating the original estimated bills, but also in distributing the actual gas use charges back in time when PEOPLES issued its "make up" bills.

34. That TRIAD does not challenge PEOPLE's use of this "degree day analysis" per se; however, in order to arrive at either an accurate "estimated bill" or an accurate "make up" bill, there is an additional variable which must be considered: the actual occupancy during the periods at issue on each property. Gas rates fluctuate over time, and severely over the periods in question, and it is critically important that the usage be measured accurately using all appropriate means in order for the final bill to be appropriate and reasonable. This is especially important, in a case such as this one, where PEOPLE'S estimated bills at Parkside not only went on for three successive months, but went on for in excess of two years, where thereby no hope exists of ever achieving "accuracy." See Paragraphs 19 and 24, supra. The longer the "estimated" period, the more in doubt is the "degree day" method as the sole determinant of gas and distribution charges in a changing rate environment.

I. "Merging" The Disputed Fulton Account

35. That on September 24, 2001, PEOPLES issued a bill to TRIAD in which it transferred the disputed Fulton balance to the Parkside account.

36. That the issues regarding Fulton and Parkside have always been, and currently remain, separate; accordingly, the billings should also remain separate.

J. New Gas Supplier

37. That during or about May to July, 2001, Petitioner changed its natural gas supplier to Santanna Energy Services (hereinafter referred to as "Santanna").

38. That as a result of PEOPLES' inaccurate billing practices as set forth above, TRIAD's business relationship with Santanna has been adversely affected, to TRIAD's damage.

39. That, in addition, PEOPLES should not be allowed to refuse to distribute natural gas which is currently being supplied by Santanna, or any other supplier.

K. Decentralization

40. That after making two requests by telephone on January 19 and February 7, 2001, and one written request on April 2, 2001, representatives from PEOPLES came out to the Parkside building on or about June 15, 2001, to review and approve TRIAD's proposal to decentralize the Parkside property, so that each unit could be individually metered. As memorialized in TRIAD's correspondence to PEOPLES dated August 28, 2001, that request was denied without explanation. See "Exhibit F."

41. That specifically, on or about June 15, 2001, representatives of TRIAD and PEOPLES met at the Parkside property to discuss TRIAD's proposal to decentralize its Parkside property.

42. That TRIAD's proposal, orally described to PEOPLES' representatives at the Parkside building on or about June 15, 2001, was to use the existing gas piping to the kitchen of each unit to accomplish decentralization of the metering.

43. That in each unit, the gas stove is located next to or near the exterior wall of the kitchen, all on the north wall (alley side) of the building.

44. That TRIAD's proposal would have a small hole (or holes) made in the exterior wall to the outside, through which a gas pipe would protrude to the rear porch where a meter would be placed.

45. That new meters would be read by a remote device, and would also be accessible from the outside, to be serviced, as necessary.

46. That TRIAD's proposed decentralization plan would use the existing piping and would cause the least disruption to the building structure and TRIAD's tenants.

47. That TRIAD's proposed decentralization plan, as described, appeared to represent the least costly method of decentralization, as it required only two minor changes in the Parkside property's existing infrastructure:

- (a) A first outlet pipe (from the gas meter, located in a basement in the center of the building) branches to the kitchens. A second outlet pipe runs to the outside of the building's north wall and then to the western-most basement, the location of the boiler and water heaters. The first outlet pipe would be disconnected and reconnected to the service pipe before the meter's inlet—a small physical change of a few feet of pipe that involves no other structural changes. *Since a service pipe is involved, this pipe movement could only be made by or approved by PEOPLES.*
- (b) In each kitchen, TRIAD would redirect the current gas pipe through the exterior (north) wall. PEOPLES would install a meter and its hanging structure. This is a readily accessible location reached by the rear stairs to each unit. An outlet pipe from each meter would be run back through the wall to the stove, a separate heating furnace, or both. This would eliminate the necessity of installing new piping to each unit, which would be a major expense to TRIAD and would cause significant interference with the tenants' quiet use and enjoyment of their apartments.

48. That PEOPLES refused TRIAD's proposed decentralization plan without stating why it was unacceptable and without offering any alternate decentralization plan for TRIAD's review and consideration.

49. That TRIAD asked PEOPLE's representatives for a reason why its proposed decentralization plan was unacceptable, but was given no further explanation other than it simply could not be done that way.

50. That TRIAD's request for a written explanation as to why its proposed decentralization plan was unacceptable was similarly denied.

51. That during or about this time, there existed a provision of the Illinois Administrative Code, specifically 83 IL Admin. 500.170, which regulated the location of service meters and imposed a duty of good faith dealing between utilities and its customers when it came to disputes of this kind.

52. That Section 170 of Part 500 of the Illinois Administrative Code is entitled "Location of Service Meters," and provides as follows:

Section 500.170 Location of Service Meters

a) Meters shall be located on the customer's premises as near as practical to the point of entrance of gas service into customer's building or utilization area as mutually agreed upon by the utility and customer. Said location shall be accessible and provide reasonable protection for the meter from accidental damage or hazardous operation. Meters shall not be installed in sleeping rooms, small unventilated areas or in locations where the installation, reading and removal of the meter may prove difficult or hazardous. Out-of-doors meters may not be installed in front of a residential dwelling except with the consent of the customer.

83 IL Admin. 500.170 (emphasis added).

53. That Section 170 (a) provides that both the utility and the customer shall mutually agree upon the location of gas meters on the customer's premises; as such, this section imposes a duty of good faith upon both parties to resolve any dispute regarding location of the meters in an amicable fashion.

54. That PEOPLES failed and refused to act in good faith when it came to this decentralization issue, in violation of 83 IL Admin. 500.170.

55. That as a result of PEOPLES' failure and willful refusal to act in good faith, TRIAD's premises remain to this day without individual meters for each unit.

56. That as a direct and proximate result of PEOPLES' failure and willful refusal to act in good faith in accordance with 83 IL Admin. 500.170, especially when coupled with PEOPLES' failure to take actual meter readings on a monthly basis, TRIAD has suffered monetary damages in a sum equal to the amount of its tenants' cooking gas usage from January 19, 2001, forward, which TRIAD has been unable either to appropriately budget for or to recoup from its tenants.

57. That insofar as PEOPLES' violation of 83 IL Admin. 500.170 was willful, TRIAD is entitled to an award of both compensatory and punitive damages, as well as an award of reasonable attorneys' fees, in accordance with 220 ILCS 5/5-201.

L. Late Charges

58. That PEOPLES has inappropriately assessed TRIAD various late payment charges on disputed, erroneous bills for which TRIAD actually is entitled to a refund. As such, the same cannot be classified as a "past due bill" as that term is used in 83 IL Admin. Code, Ch. 1, §280.90.

WHEREFORE, Petitioner TRIAD MANAGEMENT, INC., respectfully requests that this Honorable Commission grant it the following relief:

- A. That it be properly billed for actual gas used at both the Parkside and Fulton properties, taking into consideration all pertinent provisions of the Illinois Administrative Code, as well as the occupancy distribution factor, referenced in Paragraphs 30 and 31;
- B. That any and all late charges be reversed;
- C. That it be given a refund for any overcharge with interest from the date of overpayment, in accordance with 83 IL Admin. Code Ch. 1, Sec. 280.75;
- D. That it be given a refund for any deposit to which it may be entitled, with interest, in accordance with 83 IL Admin. Code Ch. 1, Sec. 280.70;
- E. That PEOPLES be enjoined from interfering with the supply of natural gas service to any property owned by TRIAD during the pendency of these proceedings;
- F. That PEOPLES be enjoined from interfering with the supply of natural gas service from Santanna, or any other third party TRIAD may engage, to any property owned by TRIAD during the pendency of these proceedings, or thereafter;

G. That the Fulton billings be held separate and apart from the Parkside billings for all purposes;

H. That PEOPLES be ordered to approve TRIAD's plan to decentralize Parkside; in the alternative, that PEOPLES be ordered to provide to TRIAD, in writing: (i) the basis for their refusal of TRIAD's decentralization request, (ii) the source of any legal authority by which TRIAD may determine what it can rely upon as a basis for decentralization, and (iii) a least cost alternative decentralization plan;

I. That it be granted an award of compensatory and punitive damages, as well as an award of reasonable attorneys' fees, in accordance with 220 ILCS 5/5-201, for PEOPLES' willful violation of 83 IL Admin. 500.170;

J. That it be awarded an amount of reasonable attorney fees and costs associated with these administrative proceedings;

K. That, should it be determined that TRIAD owes PEOPLES money for gas distributed and supplied to Parkside and Fulton, that it be given a sufficient period of time to pay the same at least as long as the period over which the "make-up" bills were calculated, not less than thirty-two months, to repay the same, in accordance with 83 IL Admin. Code Ch. 1, Sec. 280.100(d), and that said bills be paid solely out of tenant revenues generated by the property;


L. That PEOPLES be ordered to accept and use TRIAD's actual meter readings in the future; and

M. That it be granted such other and further relief that this Honorable Commission may deem equitable and just.

Pursuant to 83 IL Admin. Code Ch.1, §200.170, Petitioner states as follows: (1) it will not agree to accept service by electronic means; and (2) it has complied with 83 IL Admin. Code Ch.1, §280.170.

Atty. No. 15779
Stephen T. Saporta
Attorney for Petitioner
39 S. LaSalle St., Suite 200
Chicago, IL 60603
312/984-0418

Respectfully Submitted,
TRIAD MANAGEMENT, INC.

BY: 
One of Petitioner's Attorneys

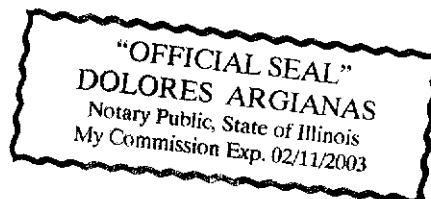
VERIFICATION

I, David I. Korman, first being duly sworn, upon oath depose and
say that I am President of Triad Management, Inc.
a Corporation formed under the laws of the State of Illinois;
that I have read the above and foregoing petition ("First Amended Complaint" in re:
Triad Management, Inc., vs. Peoples Energy Corporation, Case No. 02-0066) by me
subscribed and know the contents thereof; that said contents are true in substance and
in fact, except as to those matters stated upon information and belief, and, as to those, I
believe same to be true.

David I. Korman
Name
Pres.
Title

Subscribed and sworn to before me this
9th day of Sept., 2002.

Dolores Argianas
Notary Public



VERIFICATION BY CERTIFICATION

Under penalties as provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure, the undersigned certifies that the statements set forth in the foregoing instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

TRIAD MANAGEMENT, INC.

David I. Korman

DAVID KORMAN, PRESIDENT

9/5/02

DATED

Atty. No. 15779
Stephen T. Saporta
Attorney for Petitioner
39 S. LaSalle St., Suite 200
Chicago, IL 60603
312/984-0418

**IN PROCEEDINGS BEFORE
THE ILLINOIS COMMERCE COMMISSION**

TRIAD MANAGEMENT, INC.,
an Illinois corporation,

Petitioner,

v.

PEOPLES GAS LIGHT AND COKE CO.,
an Illinois corporation,

Respondent.

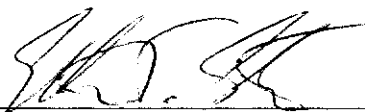
Case No. 02-0066

NOTICE OF FILING

To: **Peoples Energy Office of Legal Counsel**
130 E. Randolph Dr., 23 FL.
Chicago, IL 60601
Attn: Brian McCarthy, Esq.

Administrative Law Judge Terrance Hilliard
160 N. LaSalle St., Suite C-800
Chicago, IL 60602

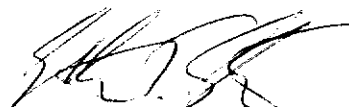
Please take notice that on September 5, 2002, the undersigned delivered for filing via UPS Overnight Delivery Petitioner's "First Amended Complaint," a true and correct copy of which is attached hereto and is hereby served upon you.



Stephen T. Saporta

CERTIFICATE OF SERVICE

The undersigned certifies pursuant to 735 ILCS 5/1-109 that he served a true and correct copy of this "Notice of Filing" together with Petitioner's "First Amended Complaint," by placing the same in a sealed envelope, properly addressed to the parties set forth above, with proper first class postage prepaid, and placing the same in the U.S. Mail at 39 S. LaSalle Street, Chicago, Illinois 60603 on or before 5:00 p.m. on September 5, 2002.



Stephen T. Saporta

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